



Virginia  
Regulatory  
Town Hall

## Final Regulation Agency Background Document

<b>Agency Name:</b>	Board of Medicine, Department of Health Professions
<b>VAC Chapter Number:</b>	18 VAC 85-110-10 et seq.
<b>Regulation Title:</b>	Regulations Governing the Practice of Licensed Acupuncturists
<b>Action Title:</b>	Periodic review
<b>Date:</b>	12/17/02

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

### Summary

*Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.*

Amendments are proposed in response to a periodic review of regulations to provide consistency in the educational requirements with the national certifying body and to address concerns about the unnecessary burden placed on applicants with a foreign education in acupuncture. Other amendments are recommended to clarify certain provisions of the regulations.

### Changes Made Since the Proposed Stage

*Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.*

Changes to proposed regulations have been made in the adoption of final amendments in response to recommendations from the Department of Planning and Budget to clarify one section of the regulation. Amendments in section 60 A clarify that the applicant trained in an unapproved educational program, whether foreign or U.S., must have a credential evaluation service verify that there is equivalency in education as required by the Board in section 50.

### Statement of Final Agency Action

*Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.*

On December 13, 2002, the Board of Medicine adopted final amendments to 18 VAC 85-110-10 et seq., Regulations Governing the Practice of Licensed Acupuncturists for the purpose of implementing recommendations from the periodic review.

### Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law*

**Chapter 24** establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

*§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:*

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification and licensure.*

5. *To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
6. *To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title.*
7. *To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*
8. *To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*
9. *To take appropriate disciplinary action for violations of applicable law and regulations.*
10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*
11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*
12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

In addition to provisions in § 54.1-2400, the Code provides a mandate for licensure and the promulgation of regulations for that purpose in:

**§ 54.1-2956.9. *Unlawful to practice acupuncture without license; unlawful designation as acupuncturist; Board to regulate acupuncturists.***--It shall be unlawful for a person to practice or to hold himself out as practicing as an acupuncturist unless he holds a license as such issued by the Board.

*In addition, it shall be unlawful for any person who is not licensed under this chapter, whose licensure has been suspended or revoked, or whose licensure has lapsed and has not been renewed to use in conjunction with his name the words "licensed acupuncturist" or to otherwise by letters, words, representations, or insignias assert or imply that he is licensed to practice acupuncture.*

*The Board of Medicine shall prescribe by regulation the qualifications governing the licensure of acupuncturists. Such regulations shall not restrict the practice of this profession to practitioners regulated by the Board on June 30, 1992, to practice the healing arts. The regulations shall at a minimum require that, prior to performing acupuncture, any acupuncturist who is not licensed to practice medicine, osteopathy or podiatry shall obtain written documentation that the patient had received a diagnostic examination from and had been referred by a licensed physician with regard to the ailment or condition to be treated. The regulations may include requirements for approved education programs, experience, examinations, periodic review of the diagnosis and treatment progress, and referral and rereferral of patients.*

**§ 54.1-2956.10. *Requisite training and educational achievements of acupuncturists.***--The Board shall establish a testing program to determine the training and educational achievements of acupuncturists, or the Board may accept other evidence such as successful completion of a national certification examination, experience, or completion of an approved training program in lieu of testing and shall establish this as a prerequisite for approval of the licensee's application.

The Assistant Attorney General who provides counsel to the Board of Medicine has provided a letter of assurance that the amended regulations are consistent with statutory law.

## Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

The purpose of the proposed regulatory action is to clarify and update the regulations pursuant to a periodic review and to amend an unnecessarily burdensome requirement for foreign-trained acupuncturists. The updated educational requirements will make compliance less burdensome for applicants, since the total number of hours required may be reduced. In addition, the proposed educational requirements (after July 1, 1999) must include clinical hours as well as didactic course work. Clinical hours in observation or internship prior to licensure are integral in the preparation for competent acupuncture practice, so the proposed requirements are essential to protect the health and safety of consumers of acupuncture treatment.

The major problem being addressed affected only a small number of applicants or potential licensees who have received their acupuncture education outside the United States and have moved into Virginia. These individuals are caught in a regulatory bind that is burdensome and which the Board has now determined is unnecessary. Currently, such an individual must repeat his acupuncture education in the U.S. (which is impossible for most whose English is very limited) or they must be licensed by another state and practice there for four years (which may also be impossible if their residence is in Virginia). The Board is confident that a transcript review by a credentialing evaluation service and passage of the national certification examination is sufficient evidence to ensure minimal competency to practice.

### Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.*

Regulations will clarify certain sections of the regulation for consistency with current terminology and practice. Educational requirements are amended to make them less burdensome for applicants and for conformity with the national certifying body. The requirement for licensure and practice in another state prior to applying to Virginia for foreign-trained acupuncturists is eliminated.

### Issues

*Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.*

#### **Advantage or disadvantages:**

There are no disadvantages to the public. There may be an advantage to a narrow segment of the population that will benefit from the services of foreign-trained acupuncturists who are currently unable to obtain a license in Virginia. Likewise, there may be some acupuncturists who will be able to open a practice or create a small business who are presently barred from licensure. The public continues to have some assurance of the competency of acupuncture practitioners by requirements for certification by NCCAOM that include continuing education.

There are no advantages or disadvantages to the agency, since there are no additional tasks or responsibilities involved in compliance with these regulations.

### Public Comment

*Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.*

A public hearing was held before the Board of Medicine at the Department of Health Professions in Richmond on October 10, 2002. No comment was presented at that time nor was any written or electronically submitted comment received during the public comment period from September 23, 2002 to November 22, 2002. There are a few individuals who have been unable to be licensed under the current provisions who have expressed strong support for these amendments during the process of changing the regulations.

## Detail of Changes

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.*

### **18 VAC 85-110-10. Definitions.**

The definitions of CCAOM and NCCAOM include the names of previous organizations that these terms replaced. That language is now outdated and unnecessary and may be deleted.

### **18 VAC 85-110-30. Non-restriction of doctors of medicine, osteopathy, chiropractic and podiatry.**

Since these regulations govern the practice of licensed acupuncturists, this section is unnecessary. The qualification of doctors to practice acupuncture is addressed in regulations governing their licensure (18 VAC 85-20-10 et seq.)

### **18 VAC 85-110-50. Educational requirements.**

Amendments to regulations are recommended to mirror the current educational requirements of the NCCAOM. Those include graduation from acupuncture program with at least 1,725 hours of entry-level acupuncture education. If an applicant was enrolled in a program on or after July 1, 1999, that program would have to be NCCAOM accredited. Educational hours must include 1,000 hours of didactic education and 500 clinical hours, including observation, internship or treatment. The remaining 225 hours may be either didactic or clinical. Hours must also be gained in a classroom or clinical setting rather than through a correspondence program.

Applicants who obtained their education prior to July 1, 1999 would continue to be eligible for licensure under the current requirements.

### **18 VAC 85-110-60. Requirements of graduates of non-approved educational programs in acupuncture.**

The Board is recommending amendments to delete the requirement for four years of practice in another jurisdiction. Instead the applicant who attended acupuncture school in a foreign country

or an unapproved program in the U. S. must submit his transcripts to a credential evaluation service to determine if his education and training was equivalent to that required by the Board in section 50.

**18 VAC 85-110-70. Part-time study.**

The prohibition on part-time study of more that five years should be eliminated in this section and the prohibition against correspondence courses addressed in the educational requirements listed in section 50.

**18 VAC 85-110-80. Examination requirements for licensure.**

The regulation needs to be clarified to state that the Board requires current NCCAOM certification at the time the applicant applies for licensure. Certification is also a requirement to renew an active license, so it is necessary for the acupuncturist to hold current certification at the time of applying for licensure and to maintain his certification.

**18 VAC 85-110-150. Biennial renewal of license.**

The current regulation states that the applicant must attest to having documentation of current certification by NCCAOM; that seems to confuse some applicants and lead them to believe they must submit that documentation to renew a license. The recommended change is to delete the words “documentation of” and require them to attest to having current certification.

**18 VAC 85-110-155. Inactive licensure.**

The Board recommends elimination of the requirement to provide information on practice and licensure in other jurisdictions for the period in which the license was inactive. That is not required for other professions regulated by the Board and is unnecessarily burdensome.

**18 VAC 85-110-160. Reinstatement.**

The regulation needs to be clarified to state that the Board requires NCCAOM certification to be active as well as current at the time the applicant applies for reinstatement.

## Family Impact Statement

*Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

In its analysis of the regulatory action, the agency has determined that there is no potential impact on the institution of the family and family stability. There may be a very modest increase in family income for the foreign-trained acupuncturist who live in Virginia and are unable to meet the current requirements for licensure and are therefore unable to practice their profession.